

MONTANA LEGISLATIVE HISTORY

Chapter 235 19 93

Bill H 561 S \_\_\_\_\_ Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) Feb 15 ☒ C

Feb 16 ☒ C

\_\_\_\_\_ ☐ C

\_\_\_\_\_ ☐ C

Date Out Feb 16 ☒ C

S. Committee on Judiciary

Hearing Date(s) Mar 12 ☒ C

\_\_\_\_\_ ☐ C

\_\_\_\_\_ ☐ C

\_\_\_\_\_ ☐ C

Mar 12 ☒ C

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Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee \_\_\_\_\_

Report \_\_\_\_\_

3/26 MISSED TRANSMITTAL DEADLINE

HB 559

INTRODUCED BY ANDERSON

PROVIDE THAT APPLICANTS FOR ADMISSION TO STATE BAR PAY  
APPLICATION FEE DIRECTLY TO STATE BAR, NOT TO SUPREME COURT  
BY REQUEST OF HOUSE JUDICIARY COMMITTEE

|      |                                                      |    |    |
|------|------------------------------------------------------|----|----|
| 2/10 | INTRODUCED                                           |    |    |
| 2/10 | REFERRED TO JUDICIARY                                |    |    |
| 2/10 | FIRST READING                                        |    |    |
| 2/15 | HEARING                                              |    |    |
| 2/17 | COMMITTEE REPORT—BILL PASSED                         |    |    |
| 2/19 | 2ND READING PASSED                                   | 91 | 3  |
| 2/22 | 3RD READING PASSED                                   | 95 | 4  |
|      | TRANSMITTED TO SENATE                                |    |    |
| 3/01 | FIRST READING                                        |    |    |
| 3/01 | REFERRED TO JUDICIARY                                |    |    |
| 3/11 | HEARING                                              |    |    |
| 3/12 | COMMITTEE REPORT—BILL CONCURRED                      |    |    |
| 3/12 | TAKEN FROM 2ND READING AND<br>REREFERRED TO TAXATION |    |    |
| 4/03 | COMMITTEE REPORT—BILL CONCURRED                      |    |    |
| 4/12 | 2ND READING CONCURRED                                | 45 | 3  |
| 4/13 | 3RD READING CONCURRED                                | 31 | 18 |
|      | RETURNED TO HOUSE                                    |    |    |
| 4/20 | SIGNED BY SPEAKER                                    |    |    |
| 4/21 | SIGNED BY PRESIDENT                                  |    |    |
| 4/22 | TRANSMITTED TO GOVERNOR                              |    |    |
| 4/23 | SIGNED BY GOVERNOR                                   |    |    |
|      | CHAPTER NUMBER 493                                   |    |    |
|      | EFFECTIVE DATE: 10/01/93                             |    |    |

HB 560

INTRODUCED BY SIMPKINS

CHANGE REPORTING REQUIREMENTS FOR AIDS AND HIV-RELATED  
ILLNESS

|      |                                    |
|------|------------------------------------|
| 2/10 | INTRODUCED                         |
| 2/10 | REFERRED TO HUMAN SERVICES & AGING |
| 2/10 | FIRST READING                      |
| 2/15 | HEARING                            |
| 2/17 | TABLED IN COMMITTEE                |

HB 561

INTRODUCED BY D. BROWN, ET AL.

AMEND HUMAN RIGHTS ACT TO INCLUDE AGENT IN EMPLOYER  
DEFINITION

BY REQUEST OF COMMISSION FOR HUMAN RIGHTS

|      |                                 |    |   |
|------|---------------------------------|----|---|
| 2/10 | INTRODUCED                      |    |   |
| 2/10 | REFERRED TO JUDICIARY           |    |   |
| 2/10 | FIRST READING                   |    |   |
| 2/15 | HEARING                         |    |   |
| 2/17 | COMMITTEE REPORT—BILL PASSED    |    |   |
| 2/19 | 2ND READING PASSED              | 93 | 5 |
| 2/22 | 3RD READING PASSED              | 91 | 7 |
|      | TRANSMITTED TO SENATE           |    |   |
| 3/01 | FIRST READING                   |    |   |
| 3/01 | REFERRED TO JUDICIARY           |    |   |
| 3/12 | HEARING                         |    |   |
| 3/12 | COMMITTEE REPORT—BILL CONCURRED |    |   |

|      |                          |    |   |
|------|--------------------------|----|---|
| 3/16 | 2ND READING CONCURRED    | 50 | 0 |
| 3/17 | 3RD READING CONCURRED    | 49 | 0 |
|      | RETURNED TO HOUSE        |    |   |
| 3/21 | SIGNED BY SPEAKER        |    |   |
| 3/24 | SIGNED BY PRESIDENT      |    |   |
| 3/29 | TRANSMITTED TO GOVERNOR  |    |   |
| 3/31 | SIGNED BY GOVERNOR       |    |   |
|      | CHAPTER NUMBER 235       |    |   |
|      | EFFECTIVE DATE: 10/01/93 |    |   |

HB 562 INTRODUCED BY J. RICE, ET AL.  
EXPAND SCOPE OF THE CRIME OF SEXUAL ABUSE OF CHILDREN

|      |                                                |    |   |
|------|------------------------------------------------|----|---|
| 2/10 | INTRODUCED                                     |    |   |
| 2/10 | REFERRED TO JUDICIARY                          |    |   |
| 2/10 | FIRST READING                                  |    |   |
| 2/10 | FISCAL NOTE REQUESTED                          |    |   |
| 2/13 | FISCAL NOTE RECEIVED                           |    |   |
| 2/15 | FISCAL NOTE PRINTED                            |    |   |
| 2/15 | HEARING                                        |    |   |
| 2/18 | COMMITTEE REPORT—BILL PASSED AS AMENDED        |    |   |
| 2/20 | 2ND READING PASSED                             | 99 | 0 |
| 2/23 | 3RD READING PASSED                             | 99 | 0 |
|      | TRANSMITTED TO SENATE                          |    |   |
| 3/01 | FIRST READING                                  |    |   |
| 3/01 | REFERRED TO JUDICIARY                          |    |   |
| 3/10 | HEARING                                        |    |   |
| 3/24 | COMMITTEE REPORT—BILL CONCURRED AS AMENDED     |    |   |
| 3/27 | 2ND READING CONCURRED                          | 48 | 0 |
| 3/29 | 3RD READING CONCURRED                          | 48 | 0 |
|      | RETURNED TO HOUSE WITH AMENDMENTS              |    |   |
| 4/01 | 2ND READING AMENDMENTS CONCURRED               | 91 | 7 |
| 4/02 | 3RD READING AMENDMENTS CONCURRED               | 99 | 0 |
| 4/13 | SIGNED BY SPEAKER                              |    |   |
| 4/13 | SIGNED BY PRESIDENT                            |    |   |
| 4/14 | TRANSMITTED TO GOVERNOR                        |    |   |
| 4/19 | RETURNED TO HOUSE WITH GOVERNOR'S AMENDMENTS   |    |   |
| 4/22 | 2ND READING GOVERNOR'S AMENDMENTS<br>CONCURRED | 99 | 0 |
| 4/22 | 3RD READING GOVERNOR'S AMENDMENTS<br>CONCURRED | 96 | 0 |
|      | TRANSMITTED TO SENATE                          |    |   |
| 4/24 | 2ND READING GOVERNOR'S AMENDMENTS<br>CONCURRED | 49 | 0 |
| 4/24 | 3RD READING GOVERNOR'S AMENDMENTS<br>CONCURRED | 49 | 0 |
| 4/28 | SIGNED BY SPEAKER                              |    |   |
| 4/28 | SIGNED BY PRESIDENT                            |    |   |
| 4/29 | TRANSMITTED TO GOVERNOR                        |    |   |
| 5/13 | SIGNED BY GOVERNOR                             |    |   |
|      | CHAPTER NUMBER 638                             |    |   |
|      | EFFECTIVE DATE: 10/01/93                       |    |   |

HOUSE BILL NO. 561

INTRODUCED BY D. BROWN, DOHERTY  
BY REQUEST OF THE HUMAN RIGHTS COMMISSION

IN THE HOUSE

|                   |                                                       |
|-------------------|-------------------------------------------------------|
| FEBRUARY 10, 1993 | INTRODUCED AND REFERRED TO COMMITTEE<br>ON JUDICIARY. |
|                   | FIRST READING.                                        |
| FEBRUARY 17, 1993 | COMMITTEE RECOMMEND BILL<br>DO PASS. REPORT ADOPTED.  |
| FEBRUARY 18, 1993 | PRINTING REPORT.                                      |
| FEBRUARY 19, 1993 | SECOND READING, DO PASS.                              |
| FEBRUARY 20, 1993 | ENGROSSING REPORT.                                    |
| FEBRUARY 22, 1993 | THIRD READING, PASSED.<br>AYES, 91; NOES, 7.          |
|                   | TRANSMITTED TO SENATE.                                |

IN THE SENATE

|                |                                                                   |
|----------------|-------------------------------------------------------------------|
| MARCH 1, 1993  | INTRODUCED AND REFERRED TO COMMITTEE<br>ON JUDICIARY.             |
|                | FIRST READING.                                                    |
| MARCH 12, 1993 | COMMITTEE RECOMMEND BILL BE<br>CONCURRED IN. REPORT ADOPTED.      |
| MARCH 13, 1993 | ON MOTION, CONSIDERATION PASSED<br>TILL THE 59TH LEGISLATIVE DAY. |
| MARCH 16, 1993 | SECOND READING, CONCURRED IN.                                     |
| MARCH 17, 1993 | THIRD READING, CONCURRED IN.<br>AYES, 49; NOES, 0.                |
|                | RETURNED TO HOUSE.                                                |

IN THE HOUSE

|                |                       |
|----------------|-----------------------|
| MARCH 18, 1993 | RECEIVED FROM SENATE. |
|----------------|-----------------------|

4

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

5

1 House BILL NO. 561  
2 INTRODUCED BY Dave Brown Doherty  
3 BY REQUEST OF THE HUMAN RIGHTS COMMISSION  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA  
6 HUMAN RIGHTS ACT TO PROHIBIT DISCRIMINATION BY AN AGENT OF  
7 AN EMPLOYER; AND AMENDING SECTION 49-2-101, MCA."

8  
9 WHEREAS, the employment discrimination provision of  
10 Montana law, commonly called the Montana Human Rights Act,  
11 Title 49, chapter 2, MCA, prohibits discriminatory acts by  
12 an employer; and

13 WHEREAS, the Montana Human Rights Act does not include  
14 an agent of an employer in the definition of employer; and

15 WHEREAS, certain discriminatory employment acts,  
16 including sexual harassment, may be committed by an agent of  
17 the employer, such as a supervisor; and

18 WHEREAS, under the present Montana Human Rights Act, a  
19 complainant has no remedy against an agent of an employer;  
20 and

21 WHEREAS, the federal counterpart of the employment  
22 discrimination provision of the Montana Human Rights Act,  
23 Title VII of the Civil Rights Act of 1964, 42 U.S.C.  
24 2000e(b), does make the agent of an employer responsible for  
25 discriminatory acts committed by that agent.

1 THEREFORE, it is appropriate for the Legislature to  
2 amend the Montana Human Rights Act to make an agent of an  
3 employer responsible for discriminatory acts committed by  
4 that agent.

5  
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

7 Section 1. Section 49-2-101, MCA, is amended to read:

8 "49-2-101. Definitions. As used in this chapter, unless  
9 the context requires otherwise, the following definitions  
10 apply:

11 (1) "Age" means number of years since birth. It does  
12 not mean level of maturity or ability to handle  
13 responsibility. These latter criteria may represent  
14 legitimate considerations as reasonable grounds for  
15 discrimination without reference to age.

16 (2) "Commission" means the commission for human rights  
17 provided for in 2-15-1706.

18 (3) "Credit" means the right granted by a creditor to a  
19 person to defer payment of a debt, to incur debt and defer  
20 its payment, or to purchase property or services and defer  
21 payment therefor. It includes without limitation the right  
22 to incur and defer debt which that is secured by residential  
23 real property.

24 (4) "Credit transaction" means any invitation to apply  
25 for credit, application for credit, extension of credit, or

1 credit sale.

2 (5) "Creditor" means a person who, regularly or as a  
3 part of his the person's business, arranges for the  
4 extension of credit for which the payment of a financial  
5 charge or interest is required, whether in connection with  
6 loans, sale of property or services, or otherwise.

7 (6) "Educational institution" means a public or private  
8 institution and includes an academy; college; elementary or  
9 secondary school; extension course; kindergarten; nursery;  
10 school system; university; business, nursing, professional,  
11 secretarial, technical, or vocational school; or agent of an  
12 educational institution.

13 (7) "Employee" means any individual employed by an  
14 employer.

15 (8) "Employer" means an employer of one or more  
16 persons, or an agent of the employer, but does not include a  
17 fraternal, charitable, or religious association or  
18 corporation if the association or corporation is not  
19 organized either for private profit or to provide  
20 accommodations or services that are available on a  
21 nonmembership basis.

22 (9) "Employment agency" means a person undertaking to  
23 procure employees or opportunities to work.

24 (10) "Financial institution" means a commercial bank,  
25 trust company, savings bank, finance company, savings and

1 loan association, credit union, investment company, or  
2 insurance company.

3 (11) "Housing accommodation" means a building or portion  
4 of a building, whether constructed or to be constructed,  
5 which that is or will be used as the sleeping quarters of  
6 its occupants.

7 (12) "Labor organization" means an organization or an  
8 agent of an organization organized for the purpose, in whole  
9 or in part, of collective bargaining, of dealing with  
10 employers concerning grievances or terms or conditions of  
11 employment, or of other mutual aid and protection of  
12 employees.

13 (13) "National origin" means ancestry.

14 (14) "Person" means one or more individuals, labor  
15 unions, partnerships, associations, corporations, legal  
16 representatives, mutual companies, joint-stock companies,  
17 trusts, unincorporated employees' associations, employers,  
18 employment agencies, or labor organizations.

19 (15) (a) "Physical or mental handicap" means:

20 (i) a physical or mental impairment that substantially  
21 limits one or more of a person's major life activities;

22 (ii) a record of such an impairment; or

23 (iii) a condition regarded as such an impairment.

24 (b) Discrimination based on, because of, on the basis  
25 of, or on the grounds of physical or mental handicap

1 includes the failure to make reasonable accommodations that  
2 are required by an otherwise qualified person who has a  
3 physical or mental handicap. Any accommodation that would  
4 require an undue hardship or that would endanger the health  
5 or safety of any person is not a reasonable accommodation.

6 (16) (a) "Public accommodation" means a place which that  
7 caters or offers its services, goods, or facilities to the  
8 general public subject only to the conditions and  
9 limitations established by law and applicable to all persons  
10 alike. It includes without limitation a public inn,  
11 restaurant, eating house, hotel, roadhouse, place where food  
12 or alcoholic beverages or malt liquors are sold for  
13 consumption, motel, soda fountain, soft drink parlor,  
14 tavern, nightclub, trailer park, resort, campground,  
15 barbershop, beauty parlor, bathroom, resthouse, theater,  
16 swimming pool, skating rink, golf course, cafe, ice cream  
17 parlor, transportation company, or hospital and all other  
18 public amusement and business establishments.

19 (b) Public accommodation does not include an  
20 institution, club, or place of accommodation that proves  
21 that it is by its nature distinctly private. An institution,  
22 club, or place of accommodation may not be considered by its  
23 nature distinctly private if it has more than 100 members,  
24 provides regular meal service, and regularly receives  
25 payment for dues, fees, use of space, facilities, services,

1 meals, or beverages, directly or indirectly, from or on  
2 behalf of nonmembers, for the furtherance of trade or  
3 business. For the purposes of this subsection (16), any  
4 lodge of a recognized national fraternal organization is  
5 considered by its nature distinctly private.

6 (17) "Staff" or "commission staff" means the staff of  
7 the commission for human rights."

-End-



COMMITTEE--HOUSE JUDICIARY

Page 6

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ---- DATE READ

|        |                   |      |                                                                              |                 |       |            |                  |  |      |
|--------|-------------------|------|------------------------------------------------------------------------------|-----------------|-------|------------|------------------|--|------|
| HB0525 | RICE, JIM         |      | CREATING THE COMMISSION ON JUDICIAL ORGANIZATION & FINANCE; DUTIES; FUNDING  |                 |       |            |                  |  |      |
|        | 2/08              | 2/16 |                                                                              | DO PASS         | 2/16  | VOTE: 14-4 | APPROPRIATIONS   |  | 2/17 |
| HB0547 | REAM, BOB         |      | INCLUDE SEXUAL ORIENTATION IN HUMAN RIGHTS ACT PROTECTION                    |                 |       |            |                  |  |      |
|        | 2/10              | 2/17 |                                                                              | TABLED ON       | 02/20 | VOTE: 17-1 |                  |  |      |
| HB0548 | STRIZICH, BILL    |      | PROHIBIT DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS AND LICENSE RETAIL SALES |                 |       |            |                  |  |      |
|        | 2/10              |      |                                                                              |                 | N/A   | VOTE:      | BUSINESS & LABOR |  |      |
| HB0551 | COBB, JOHN        |      | MANDATORY DANGEROUS DRUGS INFO COURSE FOR CONVICTED PERSONS                  |                 |       |            |                  |  |      |
|        | 2/10              | 2/15 |                                                                              | PASS AS AMENDED | 2/16  | VOTE: 18-0 |                  |  | 2/17 |
| HB0554 | CLARK, ROBERT     |      | INCREASE MINIMUM PRISON TERM FOR DELIBERATE HOMICIDE TO 50 YEARS             |                 |       |            |                  |  |      |
|        | 2/10              | 2/15 |                                                                              | TABLED ON       | 02/17 | VOTE: 10-8 |                  |  |      |
| HB0555 | PAVLOVICH, BOB    |      | REVISE CLERK OF DISTRICT COURT FEES                                          |                 |       |            |                  |  |      |
|        | 2/10              | 2/15 |                                                                              | PASS AS AMENDED | 2/16  | VOTE: 18-0 |                  |  | 2/17 |
| HB0559 | ANDERSON, SHIELL  |      | PAY STATE BAR ADMISSION FEE DIRECTLY TO STATE BAR, NOT TO SUPREME COURT      |                 |       |            |                  |  |      |
|        | 2/10              | 2/15 |                                                                              | DO PASS         | 2/15  | VOTE: 18-0 |                  |  | 2/17 |
| HB0561 | BROWN, DAVE       |      | AMEND HUMAN RIGHTS ACT TO INCLUDE AGENT IN EMPLOYER DEFINITION               |                 |       |            |                  |  |      |
|        | 2/10              | 2/15 |                                                                              | DO PASS         | 2/16  | VOTE: 18-0 |                  |  | 2/17 |
| HB0562 | RICE, JIM         |      | PROHIBIT SEXUAL EXPLOITATION OF CHILDREN                                     |                 |       |            |                  |  |      |
|        | 2/10              | 2/15 |                                                                              | PASS AS AMENDED | 2/17  | VOTE: 18-0 |                  |  | 2/18 |
| HB0570 | GRINDE, LARRY HAL |      | ASSESSMENT OF GOVERNMENTAL ACTION IMPACTING PRIVATE PROPERTY                 |                 |       |            |                  |  |      |
|        | 2/10              | 2/15 |                                                                              | PASS AS AMENDED | 2/19  | VOTE: 18-0 | APPROPRIATIONS   |  | 2/20 |
| HB0573 | KADAS, MIKE       |      | REVISE LANDLORD TENANT LAWS                                                  |                 |       |            |                  |  |      |
|        | 2/10              | 2/16 |                                                                              | DO PASS         | 2/16  | VOTE: 18-0 |                  |  | 2/17 |
| HB0574 | RICE, JIM         |      | CONTINUE APPELLATE DEFENDER SYSTEM                                           |                 |       |            |                  |  |      |
|        | 2/10              | 2/16 |                                                                              | DO PASS         | 2/16  | VOTE: 18-0 | APPROPRIATIONS   |  | 2/17 |

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
53rd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN RUSSELL FAGG**, on February 15, 1993,  
at 8:00 a.m.

**ROLL CALL**

**Members Present:**

Rep. Russ Fagg, Chair (R)  
Rep. Randy Vogel, Vice Chair (R)  
Rep. Dave Brown, Vice Chair (D)  
Rep. Ellen Bergman (R)  
Rep. Jody Bird (D)  
Rep. Vivian Brooke (D)  
Rep. Bob Clark (R)  
Rep. Duane Grimes (R)  
Rep. Scott McCulloch (D)  
Rep. Jim Rice (R)  
Rep. Angela Russell (D)  
Rep. Tim Sayles (R)  
Rep. Liz Smith (R)  
Rep. Bill Tash (R)  
Rep. Howard Toole (D)  
Rep. Tim Whalen (D)  
Rep. Karyl Winslow (R)  
Rep. Diana Wyatt (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** John MacMaster, Legislative Council  
Beth Miksche, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing: HB 559, HB 555, HB 554, HB 561,  
HB 562, HB 597, HB 551, HB 570  
Executive Action: HB 559, HB 482

cost. It costs \$16,000 a year to house inmates, and it will cost \$100,000 a year if duration continues into the future. This bill is contrary to old policy as it tries to minimize and reduce the number of inmates in prison. He pointed out that homicide has one of the highest rates of completion of rehabilitation of offenses. Many times the crime is emotional or due to being under the influence of a person or an illegal substance, and importantly, many times, these offenses do not occur again from the same person.

Questions From Committee Members and Responses:

REP. BROWN asked to hear from someone from the prison system, specifically, Mickey Gamble, Administrator, Department of Corrections, before the committee votes on this bill. No one from the DOC was available to speak.

Closing by Sponsor:

REP. CLARK reminded the committee that this bill would not affect any people serving prison terms now. It would not become effective until October 1993.

HEARING ON HB 561

Opening Statement by Sponsor:

REP. DAVE BROWN, House District 72, Butte, said the purpose of this bill is to amend the definition of employer so that an agent of an employer, specifically management of an employee, can be held liable, either jointly with the employer, but more importantly, independently. Under the present statutory scheme, only the employer is liable for the actions of the management of the employee.

Proponents' Testimony:

Anne MacIntyre, Administrator, State Human Rights Commission, presented written testimony. EXHIBITS 1 and 2

David Owen, Executive Director, Montana Chamber of Commerce, presented written testimony. EXHIBIT 3

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. GRIMES asked REP. BROWN to address the concerns of Mr.

Owen's testimony (see EXHIBIT 3). REP. BROWN said one of Mr. Owen's concerns is whether an employer has responsibility for a contractor, and the answer is no. Contractors are covered by their own rights and shouldn't affect the relationship between the employer and the contractor's company.

Addressing the question, Ms. MacIntyre said that, in general, the company determines liability of an employer for any act of discrimination that occurs in the work place. It is general liability law to establish liability in the situation described.

Closing by Sponsor:

REP. BROWN said that this provision has been in federal law for 39 years and hasn't been affected by the above concern.

HEARING ON HB 562

Opening Statement by Sponsor:

REP. JIM RICE, House District 43, Helena, said that HB 562 is an effort to make child pornography illegal. Currently, Montana does not have such a law. HB 562 expands the current statute regarding special abuse to children by expanding the definition to include having a child photographed. Currently it is illegal to have a child photographed while engaged in activity which is thought to be sexual contact with another person. EXHIBITS 4, 5, 6, and 7

Proponents' Testimony:

John Conner, Montana County Attorney's Association, related that in his experience working with sexually abused children, he has found that, almost universally, people who engage in homophiliac type of behavior also frequently possess materials depicting children involved in sex acts. The MCAA has obtained search warrants so they can search out the houses of those people accused of those offenses for purposes of determining whether or not the evidence is available. It is difficult, however, to get that information before the court because it's not directly relevant to the charge itself unless law enforcement can establish, through an expert witness, the fact that this kind of behavior is happening. If this bill were passed, even though the offense is a misdemeanor, it would allow the charge of that misdemeanor to work in conjunction with felony offenses of child sexual abuse. That material can be brought before the court, and the connection can be made much more easily.

Sharon Hoff, Montana Catholic Conference, presented written testimony. EXHIBIT 8.

## HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

2-15-93

| NAME                         | PRESENT | ABSENT | EXCUSED |
|------------------------------|---------|--------|---------|
| Rep. Russ Fagg, Chairman     | ✓       |        |         |
| Rep. Randy Vogel, Vice-Chair | ✓       |        |         |
| Rep. Dave Brown, Vice-Chair  | ✓       |        |         |
| Rep. Jodi Bird               | ✓       |        |         |
| Rep. Ellen Bergman           | ✓       |        |         |
| Rep. Vivian Brooke           | ✓       |        |         |
| Rep. Bob Clark               | ✓       |        |         |
| Rep. Duane Grimes            | ✓       |        |         |
| Rep. Scott McCulloch         | ✓       |        |         |
| Rep. Jim Rice                | ✓       |        |         |
| Rep. Angela Russell          | ✓       |        |         |
| Rep. Tim Savles              | ✓       |        |         |
| Rep. Liz Smith               | ✓       |        |         |
| Rep. Bill Tash               | ✓       |        |         |
| Rep. Howard Toole            | ✓       |        |         |
| Rep. Tim Whalen              | ✓       |        |         |
| Rep. Karyl Winslow           | ✓       |        |         |
| Rep. Diana Wyatt             | ✓       |        |         |
|                              |         |        |         |
|                              |         |        |         |
|                              |         |        |         |
|                              |         |        |         |
|                              |         |        |         |
|                              |         |        |         |
|                              |         |        |         |
|                              |         |        |         |

HR:1993

wp.rollcall.man

CS-09

TESTIMONY OF ANNE MACINTYRE - HB 561  
BEFORE THE HOUSE JUDICIARY COMMITTEE  
February 15, 1993

The Human Rights Commission proposed this bill because of a specific sexual harassment case it heard several years ago. The case arose in Butte and involved a 20 year old woman who worked in a casino there. During the 10 months of her employment, the manager of the casino made many sexual advances toward her, including brushing the front of his body against her buttocks when he passed her behind the bar or in the hallway, putting his hand up her skirt, running his finger over the nipple of her breast, grabbing her breast, pinching her buttocks, attempting to grab her crotch, and making numerous sexually explicit remarks. She objected to his conduct and eventually was fired. The complainant brought her complaint against both the owner of the business for which she worked and the manager responsible for the sexual harassment. Because the manager was not an "employer" for purposes of the Human Rights Act, the Commission was not able to assign any of the responsibility for the harassment to the manager, however. In appropriate circumstances, the Commission or the courts should be able to assign liability against the individual responsible for discriminatory conduct in addition to or in place of the employer.

It is not the intent of this bill to expand the liability of employers for the acts of persons for whom they would not now be liable. The general principles of agency will continue to define the liability of the employer in situations such as these. Thus, a management employee who did not in fact commit a discriminatory practice is not subject to liability under this proposal. Further, the bill does not extend the liability of the employer to the acts of non-management employees or independent contractors when the employer did not have actual or constructive knowledge of their discriminatory acts.

Thank you for your consideration of HB561. I hope you will give it a do pass recommendation. I will be happy to respond to your questions.

49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental handicap, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

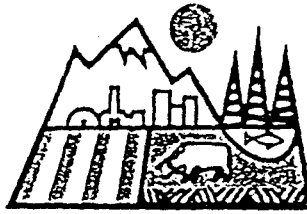
(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications shall be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(4) The application of a hiring preference as provided for in 2-18-111 and 18-1-110 may not be construed to be a violation of this section.

EXHIBIT 3  
DATE 2-15-93  
SB. HB 561



## MONTANA CHAMBER OF COMMERCE

P. O. BOX 1730

• HELENA, MONTANA 59624

• PHONE 442-2405

January 25, 1993

Ann McIntyre, Administrator  
Human Rights Commission  
P.O. Box 1728  
1236 6th Avenue  
Helena, MT 59624

Dear Ms. McIntyre:

Thank you for the opportunity to review LC 0329; an act prohibiting discrimination by an agent of an employer.

There does not seem to be a high level of opposition to this draft. The language proposed has been described as similar to that found in other states. Several concerns have surfaced and I wanted to pass those along to you in written form.

The business community hopes this change in language will not increase exposure through lawsuit or action of the Commission to more people in the "chain of command" by defining everyone as an agent.

There is concern that this language could hamper an employers defense based on lack of awareness or knowledge of the violations.

There is also concern about applying the concept of agent to independent contractors or other contractual relationships a business may have with suppliers or other businesses. It has been suggested that agent be defined or limited by using terms such as "designated agent", "agent in fact", or established and recognized agent. This would help assure that the application of the act would continue to be focused on the immediate employee and person guilty of the violation.

Thank you again for the opportunity to review this draft, I am happy to report that I have found significant support for the concept of making individuals, who violate human rights, responsible for their actions.

Respectfully,

  
David Owen  
President



HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. HB 561  
DATE Feb. 15 1993 SPONSOR(S) D. Brown

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING            | SUPPORT | OPPOSE |
|------------------|-------------------------|---------|--------|
| David Owen       | Int Chamber of Commerce | ✓       |        |
| Anne MacIntyre   | Human Rights Commission | ✓       |        |
|                  |                         |         |        |
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

**Call to Order:** By CHAIRMAN RUSSELL FAGG, on February 16, 1993,  
at 8:00 a.m.

#### ROLL CALL

**Members Present:**

Rep. Russ Fagg, Chairman (R)  
Rep. Randy Vogel, Vice Chairman (R)  
Rep. Dave Brown, Vice Chairman (D)  
Rep. Ellen Bergman (R)  
Rep. Jody Bird (D)  
Rep. Vivian Brooke (D)  
Rep. Bob Clark (R)  
Rep. Duane Grimes (R)  
Rep. Scott McCulloch (D)  
Rep. Jim Rice (R)  
Rep. Angela Russell (D)  
Rep. Tim Sayles (R)  
Rep. Liz Smith (R)  
Rep. Bill Tash (R)  
Rep. Howard Toole (D)  
Rep. Tim Whalen (D)  
Rep. Diana Wyatt (D)

**Members Excused:** Rep. Karyl Winslow (R)

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Council  
Beth Miksche, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing: HB 574, HB 525, HB 507, HB 573, HB 506,  
HB 582, HB 518, HB 590  
Executive Action: HB 573, HB 506, HB 525, HB 574, HB 518,  
HB 555, HB 561, HB 551, HB 466, HB 228,  
HB 335

EXECUTIVE ACTION ON HB 555

Motion: REP. BROWN MOVED HB 555 DO PASS.

Discussion:

REP. BROWN referred to page 6, line 8 on certifications. He believes there is a conflict between the DOA saying the impact is going to cost them \$170,000 and the Department of Social and Rehabilitation Services (SRS) saying the proposed impact would be no problem.

Motion/Vote: CHAIRMAN FAGG moved an amendment to strike "certification" from the bill on page 6, simply because it will cost SRS \$170,000. Motion passed 15-3 with REPS. BROWN, BIRD, and WYATT voting no.

Motion/Vote: REP. BROWN MOVED HB 555 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 561

Motion/Vote: REP. BROWN MOVED HB 561 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HB 551

Motion: REP. GRIMES MOVED HB 551 DO PASS.

Discussion:

REP. VOGEL asked Mr. MacMaster to explain the amendments. The amendments were proposed by Darryl Bruno, Department of Corrections (DOC). The intent of the amendments is to tighten up the language of exactly what drug information course would be taken by drug offenders. On line 11 and 12, where it refers to "dangerous drug information" course, it would say "dangerous drug information course," and then add: "at a chemical dependency program approved as provided in 53-24-208." Section 53-24-208, under the DOC, approves government and private sector chemical dependency information courses.

The other amendment would be added at the end of that sentence indicating that the program the offender would have to attend would be at the discretion of the sentencing court and the certified chemical dependency counselor who teaches the program.

Motion/Vote: CHAIRMAN FAGG moved the amendments. Motion carried unanimously.

## HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

2-16-93

| NAME                         | PRESENT | ABSENT | EXCUSED |
|------------------------------|---------|--------|---------|
| Rep. Russ Fagg, Chairman     | ✓       |        |         |
| Rep. Randy Vogel, Vice-Chair | ✓       |        |         |
| Rep. Dave Brown, Vice-Chair  | ✓       |        |         |
| Rep. Jodi Bird               | ✓       |        |         |
| Rep. Ellen Bergman           | ✓       |        |         |
| Rep. Vivian Brooke           | ✓       |        |         |
| Rep. Bob Clark               | ✓       |        |         |
| Rep. Duane Grimes            | ✓       |        |         |
| Rep. Scott McCulloch         | ✓       |        |         |
| Rep. Jim Rice                | ✓       |        |         |
| Rep. Angela Russell          | ✓       |        |         |
| Rep. Tim Savles              | ✓       |        |         |
| Rep. Liz Smith               | ✓       |        |         |
| Rep. Bill Tash               | ✓       |        |         |
| Rep. Howard Toole            | ✓       |        |         |
| Rep. Tim Whalen              | ✓       |        |         |
| Rep. Karyl Winslow           |         |        | ✓       |
| Rep. Diana Wyatt             | ✓       |        |         |
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HOUSE STANDING COMMITTEE REPORT

February 16, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House  
Bill 561 (first reading copy -- white) do pass .

Signed: Russ Fagg, Chair

Committee Vote:  
Yes 17, No 20.

38141782.NbE

1 House BILL NO. 561  
2 INTRODUCED BY Dave Brown Doherty  
3 BY REQUEST OF THE HUMAN RIGHTS COMMISSION  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA  
6 HUMAN RIGHTS ACT TO PROHIBIT DISCRIMINATION BY AN AGENT OF  
7 AN EMPLOYER; AND AMENDING SECTION 49-2-101, MCA."  
8

9 WHEREAS, the employment discrimination provision of  
10 Montana law, commonly called the Montana Human Rights Act,  
11 Title 49, chapter 2, MCA, prohibits discriminatory acts by  
12 an employer; and

13 WHEREAS, the Montana Human Rights Act does not include  
14 an agent of an employer in the definition of employer; and

15 WHEREAS, certain discriminatory employment acts,  
16 including sexual harassment, may be committed by an agent of  
17 the employer, such as a supervisor; and

18 WHEREAS, under the present Montana Human Rights Act, a  
19 complainant has no remedy against an agent of an employer;  
20 and

21 WHEREAS, the federal counterpart of the employment  
22 discrimination provision of the Montana Human Rights Act,  
23 Title VII of the Civil Rights Act of 1964, 42 U.S.C.  
24 2000e(b), does make the agent of an employer responsible for  
25 discriminatory acts committed by that agent.

1 THEREFORE, it is appropriate for the Legislature to  
2 amend the Montana Human Rights Act to make an agent of an  
3 employer responsible for discriminatory acts committed by  
4 that agent.

5  
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

7 Section 1. Section 49-2-101, MCA, is amended to read:

8 "49-2-101. Definitions. As used in this chapter, unless  
9 the context requires otherwise, the following definitions  
10 apply:

11 (1) "Age" means number of years since birth. It does  
12 not mean level of maturity or ability to handle  
13 responsibility. These latter criteria may represent  
14 legitimate considerations as reasonable grounds for  
15 discrimination without reference to age.

16 (2) "Commission" means the commission for human rights  
17 provided for in 2-15-1706.

18 (3) "Credit" means the right granted by a creditor to a  
19 person to defer payment of a debt, to incur debt and defer  
20 its payment, or to purchase property or services and defer  
21 payment therefor. It includes without limitation the right  
22 to incur and defer debt which that is secured by residential  
23 real property.

24 (4) "Credit transaction" means any invitation to apply  
25 for credit, application for credit, extension of credit, or

1 credit sale.

2 (5) "Creditor" means a person who, regularly or as a  
3 part of his the person's business, arranges for the  
4 extension of credit for which the payment of a financial  
5 charge or interest is required, whether in connection with  
6 loans, sale of property or services, or otherwise.

7 (6) "Educational institution" means a public or private  
8 institution and includes an academy; college; elementary or  
9 secondary school; extension course; kindergarten; nursery;  
10 school system; university; business, nursing, professional,  
11 secretarial, technical, or vocational school; or agent of an  
12 educational institution.

13 (7) "Employee" means any individual employed by an  
14 employer.

15 (8) "Employer" means an employer of one or more  
16 persons, or an agent of the employer, but does not include a  
17 fraternal, charitable, or religious association or  
18 corporation if the association or corporation is not  
19 organized either for private profit or to provide  
20 accommodations or services that are available on a  
21 nonmembership basis.

22 (9) "Employment agency" means a person undertaking to  
23 procure employees or opportunities to work.

24 (10) "Financial institution" means a commercial bank,  
25 trust company, savings bank, finance company, savings and

1 loan association, credit union, investment company, or  
2 insurance company.

3 (11) "Housing accommodation" means a building or portion  
4 of a building, whether constructed or to be constructed,  
5 which that is or will be used as the sleeping quarters of  
6 its occupants.

7 (12) "Labor organization" means an organization or an  
8 agent of an organization organized for the purpose, in whole  
9 or in part, of collective bargaining, of dealing with  
10 employers concerning grievances or terms or conditions of  
11 employment, or of other mutual aid and protection of  
12 employees.

13 (13) "National origin" means ancestry.

14 (14) "Person" means one or more individuals, labor  
15 unions, partnerships, associations, corporations, legal  
16 representatives, mutual companies, joint-stock companies,  
17 trusts, unincorporated employees' associations, employers,  
18 employment agencies, or labor organizations.

19 (15) (a) "Physical or mental handicap" means:

20 (i) a physical or mental impairment that substantially  
21 limits one or more of a person's major life activities;

22 (ii) a record of such an impairment; or

23 (iii) a condition regarded as such an impairment.

24 (b) Discrimination based on, because of, on the basis  
25 of, or on the grounds of physical or mental handicap

1 includes the failure to make reasonable accommodations that  
2 are required by an otherwise qualified person who has a  
3 physical or mental handicap. Any accommodation that would  
4 require an undue hardship or that would endanger the health  
5 or safety of any person is not a reasonable accommodation.

6 (16) (a) "Public accommodation" means a place which that  
7 caters or offers its services, goods, or facilities to the  
8 general public subject only to the conditions and  
9 limitations established by law and applicable to all persons  
10 alike. It includes without limitation a public inn,  
11 restaurant, eating house, hotel, roadhouse, place where food  
12 or alcoholic beverages or malt liquors are sold for  
13 consumption, motel, soda fountain, soft drink parlor,  
14 tavern, nightclub, trailer park, resort, campground,  
15 barbershop, beauty parlor, bathroom, resthouse, theater,  
16 swimming pool, skating rink, golf course, cafe, ice cream  
17 parlor, transportation company, or hospital and all other  
18 public amusement and business establishments.

19 (b) Public accommodation does not include an  
20 institution, club, or place of accommodation that proves  
21 that it is by its nature distinctly private. An institution,  
22 club, or place of accommodation may not be considered by its  
23 nature distinctly private if it has more than 100 members,  
24 provides regular meal service, and regularly receives  
25 payment for dues, fees, use of space, facilities, services,

1 meals, or beverages, directly or indirectly, from or on  
2 behalf of nonmembers, for the furtherance of trade or  
3 business. For the purposes of this subsection (16), any  
4 lodge of a recognized national fraternal organization is  
5 considered by its nature distinctly private.

6 (17) "Staff" or "commission staff" means the staff of  
7 the commission for human rights."

-End-

hC



COMMITTEE--SENATE JUDICIARY

Page 5

| BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ---- DATE READ |                   |      |      |                                                                              |  |  |          |  |      |
|-----------------------------------------------------------------------------------------------------------------------|-------------------|------|------|------------------------------------------------------------------------------|--|--|----------|--|------|
| HB0507                                                                                                                | SAYLES, TIM       |      |      | CREATE OFFENSE OF ASSAULT ON A SPORTS OFFICIAL                               |  |  |          |  |      |
|                                                                                                                       | 3/01              | 3/23 |      | CONCUR AS AMENDED 3-23                                                       |  |  |          |  | 3/24 |
| HB0521                                                                                                                | DAVIS, ERVIN      |      |      | AMEND ELDERLY ABUSE PREVENTION ACT TO INCLUDE SEXUAL ABUSE                   |  |  |          |  |      |
|                                                                                                                       | 2/22              | 3/10 |      | CONCUR 3-10                                                                  |  |  |          |  | 3/11 |
| HB0525                                                                                                                | RICE, JIM         |      |      | CREATING THE COMMISSION ON JUDICIAL ORGANIZATION & FINANCE; DUTIES; FUNDING  |  |  |          |  |      |
|                                                                                                                       | 3/12              | 3/22 |      | CONCUR AS AMENDED 3-26                                                       |  |  |          |  | 3/29 |
| HB0555                                                                                                                | PAVLOVICH, BOB    |      |      | REVISE CLERK OF DISTRICT COURT FEES                                          |  |  |          |  |      |
|                                                                                                                       | 3/01              | 3/08 |      | CONCUR AS AMENDED 3-10                                                       |  |  | TAXATION |  | 3/12 |
| HB0559                                                                                                                | ANDERSON, SHIELL  |      |      | PAY STATE BAR ADMISSION FEE DIRECTLY TO STATE BAR, NOT TO SUPREME COURT      |  |  |          |  |      |
|                                                                                                                       | 3/01              | 3/11 |      | CONCUR 3-11                                                                  |  |  | TAXATION |  | 3/12 |
| HB0561                                                                                                                | BROWN, DAVE       |      |      | AMEND HUMAN RIGHTS ACT TO INCLUDE AGENT IN EMPLOYER DEFINITION               |  |  |          |  |      |
|                                                                                                                       | 3/01              | 3/12 |      | CONCUR 3-12                                                                  |  |  |          |  | 3/12 |
| HB0562                                                                                                                | RICE, JIM         |      |      | PROHIBIT SEXUAL EXPLOITATION OF CHILDREN                                     |  |  |          |  |      |
|                                                                                                                       | 3/01              | 3/10 |      | CONCUR AS AMENDED 3-23                                                       |  |  |          |  | 3/24 |
| HB0570                                                                                                                | GRINDE, LARRY HAL |      |      | ASSESSMENT OF GOVERNMENTAL ACTION IMPACTING PRIVATE PROPERTY                 |  |  |          |  |      |
|                                                                                                                       | 3/26              | 4/06 |      | TABLED ON 04/13                                                              |  |  |          |  |      |
| HB0573                                                                                                                | KADAS, MIKE       |      |      | REVISE LANDLORD TENANT LAWS                                                  |  |  |          |  |      |
|                                                                                                                       | 3/01              | 3/10 |      | CONCUR 3-15                                                                  |  |  |          |  | 3/15 |
| HB0574                                                                                                                | RICE, JIM         |      |      | CONTINUE APPELLATE DEFENDER SYSTEM                                           |  |  |          |  |      |
|                                                                                                                       | 3/12              | 3/24 |      | CONCUR 3-24                                                                  |  |  |          |  | 3/24 |
| HB0576                                                                                                                | ENDY, WILLIAM     |      |      | CONST. AMEND TO EXTEND RIGHT TO BEAR ARMS TO LAWFUL HUNTING & RECREATION USE |  |  |          |  |      |
|                                                                                                                       | 3/19              | 3/25 | 4/13 | TABLED ON 03/29                                                              |  |  |          |  |      |
| HB0582                                                                                                                | BROWN, DAVE       |      |      | REVISE CONCEALED WEAPONS PERMIT LAW                                          |  |  |          |  |      |
|                                                                                                                       | 3/01              | 3/05 |      | TABLED ON 03/08                                                              |  |  |          |  |      |

**MINUTES**

**MONTANA SENATE  
53rd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By Senator Bill Yellowtail, on March 12, 1993, at 10:08 a.m.

**ROLL CALL**

**Members Present:**

Sen. Bill Yellowtail, Chair (D)  
Sen. Steve Doherty, Vice Chair (D)  
Sen. Sue Bartlett (D)  
Sen. Chet Blaylock (D)  
Sen. Bob Brown (R)  
Sen. Bruce Crippen (R)  
Sen. Eve Franklin (D)  
Sen. Lorents Grosfield (R)  
Sen. Mike Halligan (D)  
Sen. Tom Towe (D)

**Members Excused:** Sen. Harp, Sen. Rye

**Members Absent:** NONE

**Staff Present:** Valencia Lane, Legislative Council  
Rebecca Court, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing: HB 496  
HB 561  
HJR 21

Executive Action: HB 561  
HB 405

**HEARING ON HB 561**

**Opening Statement by Sponsor:**

Representative Dave Brown, District 72, said HB 561 would amend the Montana Human Rights Act to prohibit discrimination by an agent or employer. HB 561 was requested by the Human Rights Commission. The purpose of HB 561 is to amend the definition of employer in the Human Rights Act so an agent of an employer may be held liable for acts of discrimination committed by the manager or employee. The definition is on page 3, line 16. HB 561 does not expand the liability of the employer for acts of discrimination. Under the present law, an employer is liable for

discriminatory acts committed by management employees. Because the law does not define the management employee or employer there is no liability on part of the manager because of their own act. HB 561 does not waive liability, but allows it to be placed on an employee if the employee should have known better.

Proponents' Testimony:

Anne MacIntyre, Human Rights Commission, read from prepared testimony. (Exhibit #1) Ms. MacIntyre submitted a copy of the provision of the Human Rights Act. (Exhibit #2)

Dan Ritter, Montana Chamber of Commerce, supports HB 561.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

NONE

Closing by Sponsor:

Rep. Brown closed.

HEARING ON HB 496

Opening Statement by Sponsor:

Representative Wyatt, District 37, said HB 496 revises the Montana Human Rights Law replacing the term "handicapped" and "handicapped person" with the term "disability" and "person with a disability." HB 496 also amends sections introduced at the request of the Human Rights Commission. The purpose of HB 496 is to update terminology used in the Montana Human Rights Law so it is consistent with the terminology used in the Americans with Disabilities Act (ADA). Rep. Wyatt told the Committee the other change is on page 11, line 14, and page 15, line 8, which talks about marital status. Rep. Wyatt urged support for HB 496.

Proponents' Testimony:

Anne MacIntyre, Human Rights Commission, supports HB 496.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Bartlett asked Ms. MacIntyre if the language "a person using a wheelchair" would be more appropriate than "a person in a

27

Closing by Sponsor:

Rep. Whalen hopes the Committee would view this issue not based upon particular feelings about the position the State Bar has taken on controversial issues, but on the standpoint of sending a message to the Attorney General. The concern is with the appearance it creates to the American public because the nominees are selected by a private organization that does not represent the American public. The ABA does not attempt to represent the American public and represents less than half the lawyers in the country as members. Rep. Whalen urges support for HJR 21.

EXECUTIVE ACTION ON HB 496Motion:

Senator Brown moved HB 496 BE CONCURRED IN.

Discussion:

Senator Bartlett asked to hold on the motion in order to check on the terminology in regard to wheelchairs.

Senator Brown WITHDREW his motion.

EXECUTIVE ACTION ON HB 561Motion/Vote:

Senator Franklin moved HB 561 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 405Motion:

Senator Halligan moved amendment hb040501.avl. (Exhibit #3)

Discussion:

Senator Halligan explained the amendments.

Senator Towe asked Ms. Lane about item #8. Ms. Lane said the language came out of the statute that extends the statute of limitation for sexual abuse of children. Ms. Lane said she was going to include ritual abuse of a minor in that statute, but every other sentence contained sexual abuse of a child and it would become awkward to include ritual abuse of a minor. Ms. Lane said it would be less complicated to duplicate the statute for ritual abuse of a minor. Ms. Lane said the language was

# ROLL CALL

SENATE COMMITTEE Judiciary DATE 3-12-93

| NAME               | PRESENT | ABSENT | EXCUSED |
|--------------------|---------|--------|---------|
| Senator Yellowtail | X       |        |         |
| Senator Doherty    | X       |        |         |
| Senator Brown      | X       |        |         |
| Senator Crippen    | X       |        |         |
| Senator Grosfield  | X       |        |         |
| Senator Halligan   | X       |        |         |
| Senator Harp       |         |        | X       |
| Senator Towe       | X       |        |         |
| Senator Bartlett   | X       |        |         |
| Senator Franklin   | X       |        |         |
| Senator Blaylock   | X       |        |         |
| Senator Rye        |         |        | X       |
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TESTIMONY OF ANNE MACINTYRE - HB 561  
BEFORE THE SENATE JUDICIARY COMMITTEE  
March 12, 1993

The Human Rights Commission proposed this bill because of a specific sexual harassment case it heard several years ago. The case arose in Butte and involved a 20 year old woman who worked in a casino there. During the 10 months of her employment, the manager of the casino made many sexual advances toward her, including brushing the front of his body against her buttocks when he passed her behind the bar or in the hallway, putting his hand up her skirt, running his finger over the nipple of her breast, grabbing her breast, pinching her buttocks, attempting to grab her crotch, and making numerous sexually explicit remarks. She objected to his conduct and eventually was fired. The complainant brought her complaint against both the owner of the business for which she worked and the manager responsible for the sexual harassment. Because the manager was not an "employer" for purposes of the Human Rights Act, the Commission was not able to assign any of the responsibility for the harassment to the manager, however. In appropriate circumstances, the Commission or the courts should be able to assign liability against the individual responsible for discriminatory conduct in addition to or in place of the employer.

It is not the intent of this bill to expand the liability of employers for the acts of persons for whom they would not now be liable. The general principles of agency will continue to define the liability of the employer in situations such as these. Thus, a management employee who did not in fact commit a discriminatory practice is not subject to liability under this proposal. Further, the bill does not extend the liability of the employer to the acts of non-management employees or independent contractors when the employer did not have actual or constructive knowledge of their discriminatory acts.

Thank you for your consideration of HB561. I hope you will recommend that it be concurred in. I will be happy to respond to your questions.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 1  
DATE 3-12-93  
BILL NO. HB561

**49-2-303. Discrimination in employment.** (1) It is an unlawful discriminatory practice for:

(a) **an employer** to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental handicap, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or **an employer** or employee because of race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, marital status, or sex distinction;

(c) **an employer** or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications shall be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(4) The application of a hiring preference as provided for in 2-18-111 and 18-1-110 may not be construed to be a violation of this section.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 3-12-93

BILL NO. HBS61

DATE 3-12-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: H.B. 496 - Wyatt H.R. 21  
H.R. 521 - Brown

Name

Representing

Bill  
No.

Check One  
Support Oppose

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|----------------|-----------------------|--------|---|--|
| D ZITTER       | MT CHAMBER            | HB 561 | X |  |
| Anne MacIntyre | Human Rights Comm'ss. | HB 566 | X |  |
| Anne MacIntyre | Human Rights Comm     | HB 496 | X |  |
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## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY



SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 12, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 561 (first reading copy -- blue), respectfully report that House Bill No. 561 be concurred in.

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair

## HOUSE BILL NO. 561

INTRODUCED BY D. BROWN, DOHERTY

BY REQUEST OF THE HUMAN RIGHTS COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA HUMAN RIGHTS ACT TO PROHIBIT DISCRIMINATION BY AN AGENT OF AN EMPLOYER; AND AMENDING SECTION 49-2-101, MCA."

WHEREAS, the employment discrimination provision of Montana law, commonly called the Montana Human Rights Act, Title 49, chapter 2, MCA, prohibits discriminatory acts by an employer; and

WHEREAS, the Montana Human Rights Act does not include an agent of an employer in the definition of employer; and

WHEREAS, certain discriminatory employment acts, including sexual harassment, may be committed by an agent of the employer, such as a supervisor; and

WHEREAS, under the present Montana Human Rights Act, a complainant has no remedy against an agent of an employer; and

WHEREAS, the federal counterpart of the employment discrimination provision of the Montana Human Rights Act, Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e(b), does make the agent of an employer responsible for discriminatory acts committed by that agent.

THEREFORE, it is appropriate for the Legislature to amend the Montana Human Rights Act to make an agent of an employer responsible for discriminatory acts committed by that agent.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 49-2-101, MCA, is amended to read:

"49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor. It includes without limitation the right to incur and defer debt which that is secured by residential real property.

(4) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or

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1 credit sale.

2 (5) "Creditor" means a person who, regularly or as a  
3 part of his the person's business, arranges for the  
4 extension of credit for which the payment of a financial  
5 charge or interest is required, whether in connection with  
6 loans, sale of property or services, or otherwise.

7 (6) "Educational institution" means a public or private  
8 institution and includes an academy; college; elementary or  
9 secondary school; extension course; kindergarten; nursery;  
10 school system; university; business, nursing, professional,  
11 secretarial, technical, or vocational school; or agent of an  
12 educational institution.

13 (7) "Employee" means any individual employed by an  
14 employer.

15 (8) "Employer" means an employer of one or more  
16 persons, or an agent of the employer, but does not include a  
17 fraternal, charitable, or religious association or  
18 corporation if the association or corporation is not  
19 organized either for private profit or to provide  
20 accommodations or services that are available on a  
21 nonmembership basis.

22 (9) "Employment agency" means a person undertaking to  
23 procure employees or opportunities to work.

24 (10) "Financial institution" means a commercial bank,  
25 trust company, savings bank, finance company, savings and

1 loan association, credit union, investment company, or  
2 insurance company.

3 (11) "Housing accommodation" means a building or portion  
4 of a building, whether constructed or to be constructed,  
5 which that is or will be used as the sleeping quarters of  
6 its occupants.

7 (12) "Labor organization" means an organization or an  
8 agent of an organization organized for the purpose, in whole  
9 or in part, of collective bargaining, of dealing with  
10 employers concerning grievances or terms or conditions of  
11 employment, or of other mutual aid and protection of  
12 employees.

13 (13) "National origin" means ancestry.

14 (14) "Person" means one or more individuals, labor  
15 unions, partnerships, associations, corporations, legal  
16 representatives, mutual companies, joint-stock companies,  
17 trusts, unincorporated employees' associations, employers,  
18 employment agencies, or labor organizations.

19 (15) (a) "Physical or mental handicap" means:

20 (i) a physical or mental impairment that substantially  
21 limits one or more of a person's major life activities;

22 (ii) a record of such an impairment; or

23 (iii) a condition regarded as such an impairment.

24 (b) Discrimination based on, because of, on the basis  
25 of, or on the grounds of physical or mental handicap

1 includes the failure to make reasonable accommodations that  
 2 are required by an otherwise qualified person who has a  
 3 physical or mental handicap. Any accommodation that would  
 4 require an undue hardship or that would endanger the health  
 5 or safety of any person is not a reasonable accommodation.

6 (16) (a) "Public accommodation" means a place which that  
 7 caters or offers its services, goods, or facilities to the  
 8 general public subject only to the conditions and  
 9 limitations established by law and applicable to all persons  
 10 alike. It includes without limitation a public inn,  
 11 restaurant, eating house, hotel, roadhouse, place where food  
 12 or alcoholic beverages or malt liquors are sold for  
 13 consumption, motel, soda fountain, soft drink parlor,  
 14 tavern, nightclub, trailer park, resort, campground,  
 15 barbershop, beauty parlor, bathroom, resthouse, theater,  
 16 swimming pool, skating rink, golf course, cafe, ice cream  
 17 parlor, transportation company, or hospital and all other  
 18 public amusement and business establishments.

19 (b) Public accommodation does not include an  
 20 institution, club, or place of accommodation that proves  
 21 that it is by its nature distinctly private. An institution,  
 22 club, or place of accommodation may not be considered by its  
 23 nature distinctly private if it has more than 100 members,  
 24 provides regular meal service, and regularly receives  
 25 payment for dues, fees, use of space, facilities, services,

1 meals, or beverages, directly or indirectly, from or on  
 2 behalf of nonmembers, for the furtherance of trade or  
 3 business. For the purposes of this subsection (16), any  
 4 lodge of a recognized national fraternal organization is  
 5 considered by its nature distinctly private.

6 (17) "Staff" or "commission staff" means the staff of  
 7 the commission for human rights."

-End-